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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of
MOLLY H. and HENRY C. YUEN.

HENRY C. YUEN,

Appellant,

v.

MOLLY H. YUEN,

Respondent.

B201276
x-ref. B195293

(Super. Ct. No. D181995)

APPEAL from an order of the Superior Court of Los Angeles County.
Mark A. Juhas, Judge. Affirmed.

Allan Law Group, Martin B. Snyder and Robert J. Allan for Appellant.

Dreier Stein Kahan Browne Woods George, Henry S. David; Snell & Wilmer
and Henry S. David for Respondent.

Henry Yuen appeals from an order awarding attorney's fees to Molly Yuen, his former spouse.¹ We affirm.

BACKGROUND

Our opinion in a previous appeal (*In re Marriage of Yuen* (October 30, 2008, B195293) [nonpub. opn.]) contains an extensive summary of the course of proceedings. For purposes of this appeal, a shorter summary is sufficient.

On December 23, 1986, Henry filed a petition for dissolution of his marriage to Molly. On September 15, 1987, the trial court entered a stipulated judgment dissolving the marriage. On August 15, 1997, Molly moved to set aside the 1987 judgment and/or to divide concealed assets. On August 8, 2000, Henry and Molly entered into a stipulation resolving Molly's motion, and the court entered an order on the stipulation (hereafter the "2000 order") on the same day.

The 2000 order required Henry to pay more than \$56,000,000 in spousal support to Molly in periodic payments through 2009, including payments of approximately \$5,000,000 in August each year from 2001 through 2009. The 2000 order also provided that if Henry did not make his payments on time, then, under certain circumstances, additional monetary penalties could accrue and all remaining payments could accelerate. The 2000 order also provided that "[t]he prevailing party in any enforcement proceeding shall be entitled to reasonable attorney's fees and costs, including any accountant's fees and costs, incurred for the enforcement proceedings."

In 2002, Molly and Henry entered into an agreement (hereafter the "2002 agreement") purporting to modify the 2000 order. Henry made no spousal support payments to Molly in August 2003 or thereafter. In 2005, Molly filed a motion to confirm spousal support arrearages and to declare the 2002 agreement invalid and/or unenforceable. Henry opposed the motion, arguing that the 2002 agreement was

¹ We will refer to the parties by their first names in order to avoid confusion. No disrespect is intended.

enforceable, that all of his remaining spousal support payments were deferred under that agreement, and that he consequently owed Molly nothing.

The trial court rejected Molly's argument that the 2002 agreement was unenforceable but granted her motion nonetheless, determining that Henry owed her spousal support arrearages in the principal amount of \$46,193,076. We affirmed in substantial part, determining that the principal sum must be reduced by \$5,250,000 and that interest must be recalculated.

After the trial court granted her motion to confirm arrearages, Molly moved for an award of attorney's fees and costs in the amount of \$1,883,033.77, which she claimed to have "incurred in connection with the [m]otion to [c]onfirm [a]rrearages and [other] enforcement efforts." Henry opposed the motion, contending inter alia that the motion to confirm arrearages was not an "enforcement proceeding" within the meaning of the attorney's fees provision of the 2000 order and that Molly was not the prevailing party. The parties later entered into a stipulation concerning the amount of fees and costs at issue in the motion, agreeing that "[i]f and to the extent the [c]ourt grants the [f]ee [m]otion, Molly shall be allowed fees and costs in the total amount of [o]ne [m]illion [t]wo [h]undred [t]housand [d]ollars (\$1,200,000) for the fees and costs that Molly seeks to recover in the [f]ee [m]otion."

The trial court granted Molly's fee motion, determining that the motion to confirm arrearages was an enforcement proceeding and that Molly was the prevailing party. On the basis of those determinations and the parties' stipulation, the court awarded Molly \$1,200,000 in attorney's fees and costs. Henry timely appealed.

DISCUSSION

On appeal, Henry advances several arguments for the conclusion that Molly was not entitled to an award of attorney's fees. We conclude that none has merit.

First, Henry contends that Molly cannot be entitled to an award of attorney's fees under Civil Code section 1717 because her motion to confirm arrearages was not an "action on a contract." In support of that contention, Henry argues that Molly "did not

sue for breach of contract” and “did not seek . . . any contract-related remedy, such as specific performance or declaratory relief.” We disagree. The motion to confirm arrearages sought a judicial determination of whether Molly was right that Henry was in breach of the 2000 order and already owed her over \$40,000,000, or, alternatively, Henry was right that he was not in breach and owed her nothing, with all remaining payments under the 2000 order deferred to some future date. Consequently, the motion was in substance a declaratory relief action—it sought a judicial resolution of the parties’ dispute concerning the meaning and effect of their agreements. Because Henry concedes that “declaratory relief” is a “contract-related remedy,” his argument fails.

Second, Henry contends that the motion to confirm arrearages was not an “enforcement proceeding” within the meaning of the attorney’s fees provision of the 2000 order, because (1) the motion “added nothing to Molly’s right and ability to collect or enforce [the] judgment,” and (2) “[e]nforcement” means, quite simply, the collection of an existing judgment.” We disagree. Before the trial court granted Molly’s motion to confirm arrearages, there was an unresolved dispute between Molly and Henry concerning the performance due under the 2000 order—Henry contended that the 2002 agreement showed that he owed her nothing, but Molly disagreed and contended that he already owed her over \$40,000,000. Having prevailed on her motion to confirm arrearages, Molly now has obtained a judicial determination that she was right and Henry was wrong. Henry fails to explain how being armed with such a judicial determination “add[s] nothing” to Molly’s ability to collect the money Henry owes her under the 2000 order. Moreover, a motion seeking such a judicial determination is a proceeding to enforce the 2000 order, just as an action seeking a declaratory judgment concerning a breach of contract is a proceeding to enforce the contract.

Third, Henry contends that Molly was not the prevailing party within the meaning of Civil Code section 1717 because she is not “the party who recovered a greater relief in the action on the contract.” (Civ. Code, § 1717, subd. (b)(1).) In support of that contention, Henry relies upon a dissenting opinion in the Court of Appeal concerning a different statute, Code of Civil Procedure section 1032. We are

not persuaded. In her motion to confirm arrearages, Molly sought a judicial determination that Henry owed her over \$40,000,000; Henry's position was that he owed her nothing. Molly obtained the judicial determination that she sought. She therefore "recovered a greater relief" than Henry and was consequently the prevailing party within the meaning of Civil Code section 1717.

Fourth, Henry contends that "Molly cannot recover attorney's fees and costs related to her attempt to invalidate" the 2002 agreement, because Molly did not succeed in her attempt to invalidate the 2002 agreement. We find the argument unpersuasive. Molly's motion to confirm arrearages constituted an enforcement proceeding. Molly prevailed on that motion. Her argument that the 2002 agreement was invalid was just one of several arguments in support of her position. She did not need to prevail on that argument in order to prevail on the motion, and in fact she did not prevail on that argument but did prevail on the motion. She therefore is the prevailing party in the enforcement proceeding and is entitled to attorney's fees for that proceeding. Henry cites no authority for the proposition that a party entitled to attorney's fees for prevailing on a motion must separate out, and cannot recover, fees incurred in advancing unsuccessful arguments in support of that motion. We are aware of no such authority. We therefore reject Henry's argument.

Finally, Henry argues that Molly was not entitled to an award of attorney's fees under Code of Civil Procedure section 685.040. The trial court, however, based its award on both Civil Code section 1717 and Code of Civil Procedure section 685.040. Because Henry has failed to show that the trial court erred in awarding fees pursuant to Civil Code section 1717, any putative error in the court's additional reliance on Code of Civil Procedure section 685.040 was not prejudicial.

DISPOSITION

The order is affirmed. Respondent shall recover her costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.